

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.913 OF 2004

M/s.New Heritage Associate & others).. Appellants
(Org.Defendants)

versus

Agostind D. Pereira).. Respondent
(Org.Plaintiff)

Mr.Rajiv Patil with Smt.Sangita Bhole for the
Appellants.

Mr.Anil J.Rege for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 1ST NOVEMBER 2004

P.C. :

. Under a development agreement the Plaintiff had agreed to give the Appellant/Defendant the development rights of the property leased to the Plaintiff by CIDCO. According to the Plaintiff, he is now in possession of the property. By the interim order passed by the trial Court on 17th June 2004, the trial Court had permitted the Defendant to complete construction of the building within two months and to obtain completion certificate and occupation certificate. Accordingly occupation certificate has been obtained by the Defendant on 11th August 2004. According to the Defendant, a few minor works are to be carried out in order to complete the work under the development agreement. The entire structure has been erected and it is only the water

connection which is to be made available.

2. By the impugned order dated 7th October 2004, the Defendant has been restrained from causing obstruction to the possession of the Plaintiff in respect of the suit property and structure standing on it and the Defendant was directed not to cause any obstruction in the construction work of the Plaintiff.

3. According to the learned Advocate for the Plaintiff, the Defendant at best would be entitled to maintain a Suit for damages since the Defendant is claiming loss under the development agreement. He submits that the Defendant cannot get any relief in the suit filed by the Plaintiff. In the case of *Gurudev Developers vs. Kurla Konkan Niwas Co-op. Hsg. Society*, **2000 (3) Mh.L.J.131**, this Court has held that development agreement only gives a right to a developer to claim damages in a case where a dispute arises and specific performance of the contract has been asked for. According to Mr.Patil, the learned Advocate for the Defendant, the developer having completed the entire building should be able to avail of the clauses of the contract under which the developer can retain 62% of the FSI whereas the balance 38% shall be given to the Plaintiff.

4. Assuming this to be so, at best, under the development agreement, the developer would only be entitled to damages and nothing further. In any event, the possession is with the Plaintiff. I see no reason to interfere with the findings of the trial Court. Hence, Appeal From Order dismissed.

5. In view of the dismissal of the Appeal From Order, nothing survives in Civil Application No.1253 of 2004 and the same is disposed of accordingly.

6. Certified copy expedited.